

REYNOLDS MINING CORP.

IBLA 78-340

Decided March 2, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition to reinstate oil and gas lease W 16866, terminated for failure to make timely rental payment.

Affirmed.

1. Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

An oil and gas lease which has terminated by operation of law due to late payment of annual rental will not be reinstated where it appears that the rental payment was not mailed early enough to account for the normal delays in the transmission of the mail.

APPEARANCES: Kenneth A. Barry, Esq., Richmond, Virginia, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Reynolds Mining Corp. appeals from a February 15, 1978, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying a petition for reinstatement of oil and gas lease W 16866 which terminated February 1, 1978 (a Wednesday), when no advance rental payment was received by BLM. Subsequently, on February 2, 1978, BLM received the subject rental payment in an envelope postmarked January 30, 1978, Bauxite, Arkansas. Appellant states that, "Our letter and check were mailed from Little Rock, Arkansas, on January 30, 1978. Due to the extreme winter weather conditions existing in this area, no doubt our mail has been somewhat delayed. We believe this is the reason the payment was late in arriving in Cheyenne."

[1] Under the provision of 30 U.S.C. s 188(c) (1976), appellant's lease can be reinstated under the present set of facts only if the failure to make timely payment is found to be justifiable or "not due to a lack of reasonable diligence on the part of the lessee." The applicable regulation, 43 CFR 3108.2-1(c)(2), reads as follows:

The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments. [Emphasis added.]

Reynolds' letter, mailed on January 30, had 3 days, counting the day it was due, to reach the Cheyenne, Wyoming, office, BLM, before the lease expired. No evidence in the record suggests that a payment, posted in Arkansas 2 days in advance of the due date, would, in the normal course of business, reach Cheyenne in a timely fashion. In Rosemary Weaver, 30 IBLA 227 (1977), we held that a lessee who mailed a payment from New York City to Cheyenne, Wyoming, 2 days before the anniversary did not act with reasonable diligence. Similarly, in L. J. Arrieta, 26 IBLA 188 (1976), we found that appellant/lessee's failure to make timely payment was due to a lack of reasonable diligence under the following facts:

Appellant did not send the payment until May 1, 1976, from Culver City, Calif. to Billings, Montana. In William N. Cannon, 20 IBLA 361 (1975), we discussed mailing payments over long distances only 2 days before the due date. We stated:

We cannot say that mailing a payment this distance [Texas to Utah] two days in advance of the due date takes into account "normal delays" in the handling of the mail. Indeed, it is clear that a letter in that instance might arrive on time only if there were no delays of any kind, but rather was handled with extraordinary dispatch.

In this case the payment apparently was mailed on a Saturday from California and was due in Montana on Monday. We cannot say that appellant was reasonably diligent. [Emphasis in original.]

26 IBLA at 189.

Appellants suggest, without elaboration or supporting proof, that "extreme winter conditions" delayed postal operations and resulted in the late delivery of their payment. As we pointed out in Cannon, *supra* at 362, payments must be mailed early enough to allow for normal delays in the collection, transmittal, and delivery of the mail. "Unusual delays," those which a lessee need not

anticipate under 43 CFR 3108.2-1(c)(2), supra, are mentioned in the legislative history of the statute, (30 U.S.C. § 188(c) (1976)). The two examples of "unusual delays" given in that legislative history are transportation strikes and natural disasters, such as the 1964 Alaskan earthquake (Cannon, at 363). On the basis of the record before us, we must conclude that the delays, if any, which may have befallen appellant's payment letter were of the ordinary variety and should have been foreseen by appellant. For the reasons set forth in Arrieta, supra, we find appellant failed to act with due diligence in making its lease payment, and its petition for reinstatement was properly denied. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ As recent as January 29, 1979, we held that mailing rental 2 days before the due date for a long distance constituted a failure to exercise reasonable diligence. Helen Bacha, 39 IBLA 146 (1979).

